

## Chapter 3 – General Leave

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### Section I Annual Leave

#### Purpose

The purpose of this policy is to provide the procedures for earning paid leave for time away from work for personal reasons including vacation time.

#### Scope

This policy applies to all employees who are not in temporary or emergency positions or in restricted positions for which the funding sources do not provide benefits. A part-time employee is one who works at least one half the normal work week hours or greater.

#### A. Accruing Annual Leave

##### 1. Rate

Employees earn paid annual leave on a pay period basis as follows:

- a. A full-time employee earns annual leave based upon years of service.
- b. A part-time employee earns annual leave at a proportionate rate. The employee must work at least half of the LDSS work week in order to accrue leave.
- c. If the LDSS does not have monthly pay periods, annual leave is accrued each pay period in an amount proportionate to that earned on a monthly basis.
- d. The following chart sets forth the amounts of annual leave that may be accrued during each month based on years of service. A day equates to eight hours if the normal work schedule is forty hours. For LDSS that have bi-monthly or bi-weekly pay periods, the accrual rate can be adjusted accordingly.

<u>Years of Service</u>	<u>Monthly Accrual Rate</u>
Up to 5 years	1 day
5 years	1-1/4 days
10 years	1-1/2 days
15 years	1-3/4 days

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20 years	2 days
25 years	2-1/4 days

- e. When hiring an employee who left a position without a break in service with another LDSS or the Virginia Department of Social Services, the LDSS has the authority to provide the employee with the same accrual rate of the previous position.

### 2. Accrual of Leave

Annual leave does not accrue until the end of the pay period in which it is earned and may not be used until the first day of the following pay period or work week.

### 3. Effect of Leave without Pay on Accrual

An employee on leave without pay for any part of the pay period or work week does not earn annual leave for that pay period or work week and may have the accrual rate affected (see Leave without Pay policy).

### 4. Carrying Over

- a. The following limits apply to the amount of annual leave that is permitted to be carried over to the next year as well as the amount that will be paid at termination.

<u>Years of Service</u>	<u>Maximum Yearly Carryover</u>
Up to 5 years	24 days
5 years	30 days
10 years	36 days
15 years	42 days
20 years	48 days
25 years	54 days

- b. For purposes of yearly carryover, a LDSS may designate a calendar year, fiscal year, or any other twelve (12) month period.

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### **B. Use of Annual Leave**

#### **1. Use**

Annual leave may be used for any reason provided advanced approval is given.

#### **2. Leave Must Be Accrued**

Annual leave can not be used until it is accrued. There is no borrowing against future accruals.

### **C. Notice and Approval**

#### **A. Advanced Approval**

Annual leave may be not used without prior approval. Although every effort will be made to accommodate a request for annual leave, not all requests can be granted during high peak times. Therefore, requests for annual leave should be submitted as soon as the need is known. For annual leave to be taken around a holiday, a request should be made as early as possible.

#### **B. Approval Required at All Times**

For absences that are not foreseeable, or for emergency situations, the employee must provide notice of the need to use the leave as soon as practicable. Until approval is provided, the absence will count as unauthorized leave without pay.

### **D. Treatment of Annual Leave upon Change in Status**

#### **1. Payment at Termination**

- a. When employment is terminated, the employee will be paid for accrued annual leave in a lump sum up to the accrued maximum carryover amount. Educational leave, FMLA leave, military leave, and other forms of extended leave are not considered terminations for the purposes of receiving payment for accrued annual leave.
- b. For the purpose of unemployment compensation benefits the lump sum payment will be allocated as wages for the equivalent daily/weekly periods.

#### **2. Payment at Death**

Payment upon an employee's death shall be made to the Administrator or the Executor of the employee's estate. If there is no Administrator or Executor, payment shall go to the surviving spouse, or if none, to the next of kin in accordance with § 64.1-123 of the *Code of Virginia*. Payment may be held for 60 days.

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### 3. Right to Repurchase

An employee who is rehired by the same LDSS within six (6) months from the date of a layoff or an employee who is reinstated by a grievance panel, may have the annual leave balances restored by paying the amount of any annual leave payment received at termination.

### E. Change in Employment Status

If the status of an employee is changed from temporary to probationary, regular, or restricted, sick leave credits shall be given for the period of temporary salaried employment. In addition, that period may also be considered part of the total service in determining the rate at which the allowance for annual leave shall accrue in the new status.

### F. Employee Accountability

1. The employee is responsible for knowing the amount of annual leave balances that should have been accrued.
2. An employee will be required to reimburse the LDSS from his/her salary for leave taken when there was a recordkeeping error and there was not sufficient accrued leave to cover the time taken. Reimbursement may be in the form of monetary reimbursement, charging the time to other accrued paid leave, or at the LDSS's option, future leave accruals.
3. No matter how urgent the need for the leave may be, the LDSS has no authority to grant paid leave when there is not sufficient accrued leave.

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### Section II Civil Leave

#### Purpose

The purpose of this policy is to provide employees with paid leave for time away from work for civic and administrative purposes.

#### Scope

This policy applies to all regular employees.

#### A. Use

##### 1. Purposes

Civil leave may be granted for the following purposes:

- a. To serve on a jury, to appear as a witness in a court proceeding or deposition as compelled by a subpoena or summons in a court proceeding in which the employee is not the plaintiff or the defendant, or to accompany the employee's child to court when the child is required to appear in court.
- b. To participate in the resolution of work related conflicts, grievances, or investigations into complaints of discrimination arising within the LDSS.
- c. To participate in a workers' compensation or unemployment compensation hearing or administrative proceeding involving the employee or another employee within the LDSS.
- d. With the prior permission of the LDSS, to serve on governmental councils, boards, commissions, or committees.

##### 2. Reasonable Use of Civil Leave

- a. The amount of civil leave requested must be reasonable.
- b. Civil leave is to include all time required for judicial appearances or jury duty, as well as travel time to and from the destination. If a full day is not required, the employee is expected to report to the office to complete the hours required for that day.

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- c. If because of distance and/or inconvenience, reporting to work before or after civil leave is not feasible, the employee with permission of the Director may use annual leave for the remaining hours of that work day.

### 3. Advance Approval Required

As soon as the employee knows of the need for the civil leave, the supervisor must be notified. If there should be a problem with the leave, to the extent that the employee can, the employee should make a request to appear at an alternative time. Failure of the employee to provide advanced notice may result in disciplinary action.

- 4. For service on a jury, the employee is to receive his full salary and not have the leave time charged to annual or compensatory leave.

## B. Compensation Received

### 1. Reimbursements

An employee may keep any money received from the administrative or judicial tribunal while on civil leave if such money is provided as reimbursement for expenses. If the employee has used an LDSS vehicle or has received any advance money (cash, credit card, or check) for travel from the LDSS, the employee is obligated to return the travel money advanced by the LDSS (in the case of the use of the LDSS vehicle, the mileage reimbursement equivalent).

### 2. Compensation

If an employee receives compensation for the services provided while on civil leave (e.g., expert witness fees or for service as a juror), the employee must report such compensation to the LDSS and have the hours taken not recorded as civil leave. The employee may use accrued annual leave, or take leave without pay, for the hours of compensated service.

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### Section III Leave without Pay

#### Purpose

The purpose of this policy is to provide procedures for LDSS to allow employees to be placed on leave without pay (LWOP).

#### Scope

This policy applies to all employees.

#### A. Use of Unpaid Leave

##### 1. Use

If the needs of the LDSS permit, and if the grant of such time away from work is not burdensome to the LDSS, an employee may request the use of unpaid leave for a specified period of time. LWOP must be granted to eligible employees for FMLA and military leave purposes.

##### 2. LWOP Not Granted if Paid Leave Available

Except for FMLA and military leaves of absence, an employee cannot be on LWOP until all accrued paid leave available for such purposes has been exhausted. In extenuating circumstances a LDSS may permit the *pro rata* use of paid leave and unpaid leave so that the employee would not lose benefits such as health plan and retirement participation.

##### 3. Duration

LWOP will not be granted for more than three (3) months except for an employee on intermittent FMLA or military leave.

##### 4. Job Restoration

- a. Except as noted below, if the LDSS cannot hold the position open during the period of LWOP, the LDSS should notify the employee at the commencement of the leave or as soon as such a determination is made that the LDSS will fill the position. The employee should be informed of the need to fill the position and that employee must report back to work on full-time status within a specified period of time. Such notice should be provided in writing and delivered to or sent by certified mail to the employee.

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- b. Employees on FMLA or military leave status are entitled to job restoration under the conditions set forth in each respective policy.
- 5. If an employee does not report back to work at the end of the LWOP period, the employee will be deemed to have resigned.

### **B. Effect of Unpaid Leave Status on Benefits**

#### 1. Accrued Leave

An employee who is on LWOP does not accrue annual or sick leave for that pay period.

#### 2. Leave Anniversary Dates

After fourteen (14) consecutive calendar days of LWOP, the employee's next leave anniversary date for the purposes of accruing annual leave will be adjusted according to the following chart:

<u>Calendar Days on Leave without Pay</u>	<u>Extension of Anniversary Date (Pay Periods)</u>
1-14	0
15-31	1
32-46	2
47-61	3
62-76	4
77-91	5

#### 3. Effect on Raises and Bonuses

An employee on LWOP may have performance raises and bonuses affected by the absence from work.

#### 4. Retirement

LWOP is to be reported to the Virginia Retirement System. An employee's years of service may be affected by such absence.

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### 5. Life Insurance

The LDSS may elect to make its contribution for life insurance for all or part of the LWOP or permit an employee on LWOP to continue coverage at the employee's expense. If such election is permitted, the LDSS must provide the employee with notice and an election form at commencement of the LWOP.

### 6. Health Care Coverage

a. Except as provided below, upon the commencement of LWOP, the employee will be provided with a COBRA Notice and Health Care Continuation Election form. If continuation coverage is elected, the employee and other qualified beneficiaries may continue coverage for 18 months (longer if disabled or with the occurrence of a second qualifying event). The full cost of the continued coverage is borne fully by the employee.

(1) If LWOP is taken under FMLA, the employee is entitled to remain under the health plan on the same terms as if employed for the entire period of the FMLA leave. The LDSS will continue to contribute its share of the costs.

(2) For short and/or intermittent periods of LWOP, the LDSS has the option of providing continuing coverage on the same terms as if the employee was not on LWOP. If such is elected, the COBRA procedures do not apply.

### 7. Other Benefits

If other benefits are provided to the employee, the LDSS should establish a policy on whether they continue during LWOP.

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### Section IV Military Leave

#### Purpose

The purpose of this policy is to provide the procedures governing leaves of absence from work for the purposes of fulfilling military duty obligations and to set forth employees' job restoration rights under the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and § 44-93 and 44-93.1 of the *Code of Virginia*.

#### Scope

This policy applies to all employees who are in non-temporary positions and who are called to covered service in the U.S. Armed Forces, commissioned Corps of the Public Health Service, National Guard, Air National Guard, Naval Militia, Coast Guard, and reservists of these uniformed services. Covered service includes: voluntary and involuntary duty; active or inactive duty; training; and full-time duty with the National Guard, Naval Militia, or Public Health Service.

#### A. Military Leave

An employee is eligible for military leave if the employee has not used five years of military leave during his employment with the LDSS.

##### 1. Advanced Notice of Need for Leave

- a. To retain job restoration rights, and to be granted leave, an employee must provide the LDSS with advanced notice, either in writing or orally, of the call to military service which includes training duty.
- b. Advanced notice must be provided unless providing such notice is not possible or reasonable under the circumstances.
- c. The employee should provide the LDSS with a copy of the military orders at time of notice, but if not presented at that time, may be provided to the LDSS after the leave is granted.

##### 2. Military Leave with Pay

- a. Per federal fiscal year, a public employee must be granted up to 15 workdays (120 hours) of military leave with pay per federally funded tour of duty.

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- b. For employees who do not normally work approximately equal workdays of five or more days per calendar week, a “workday” shall mean 1/260 of the total working hours the employee would have been scheduled to work during the federal fiscal year not taking into account any holidays, paid or unpaid leaves of absence, or other absences.
- c. Benefits received while on military leave with pay are the same as if the employee were employed.

### 3. Military Leave without Pay

- a. Employees are granted unconditional military leave without pay for covered service provided that the cumulative length of all military leave does not exceed five years and they have not been dishonorably discharged.
- b. Benefits during military leave without pay:

- (1) Leave Benefits

- (a) Annual Leave

- (i) Employees will not accrue annual leave when they are on leave without pay status.
    - (ii) Employees may retain all or a portion of their accrued annual leave, may use all or part of the accrued leave to supplement military pay, or be paid for the accrued annual leave at the commencement of military leave without pay.
    - (iii) Military leave without pay counts in the calculation of years of service when determining the rates for accruing annual leave and determining their seniority for layoff purposes.

- (b) Compensatory and Special Duty Leave

Employees may retain all or a portion of their compensatory and special duty leave, may use all or part of the leave to supplement military pay, or be paid for the leave at the commencement of military leave without pay.

- (c) Sick Leave

- (i) Employees will not accrue sick leave while on leave without pay status.

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- (ii) Employees with less than five years of continuous service with the LDSS at the commencement of military leave without pay may retain their sick leave balances, which are reactivated upon reinstatement to local service.
- (iii) Employees with five or more years of continuous employment with the LDSS at the time military leave begins may retain their entire sick leave balances (which shall be reactivated upon reinstatement) or may receive payment for the accrued sick leave under the provisions of the sick leave policy. Once payment for sick leave is made, all remaining balances are lost and can not be reinstated upon reemployment.
  - Employees who received payment for their sick leave balances and then return to work must serve another five years of continuous local service before being eligible for sick leave payment upon termination.
  - Employees may not repurchase any sick leave for which they have been paid.

### (2) Health Plan Participation

- (a) Employees called for active duty have the right to continue participating in the LDSS's health care plan for 24 months beginning one month after the date leave without pay commences provided that they elect to do so and pay the full premiums. The coverage also applies to spouses and dependents.
- (b) Upon commencement of leave without pay the employee is to receive a COBRA notice and Continuation of Coverage Election form. (Note: under USERRA, an employee who is on military leave for less than 31 days is entitled to participate in the health plan on the same terms as if employment was not interrupted.)
- (c) The election rights are for the employee as well as other qualified beneficiaries.
- (d) Upon returning from military leave an employee is entitled to participate in the LDSS's health plan, whether or not COBRA continuation coverage was elected, on the same terms as if the employment was not interrupted—e.g., the plan can not impose a waiting period or other exclusion provisions.

### (3) Retirement Plan

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Military leave is to be included in the calculation of years of service for the purpose of retirement benefits.

### **B. Reinstatement from Military Service**

1. An employee who has been on military leave for a period of 31 days or longer, should notify the LDSS of the employee's intention to be reemployed and the expected date of return.
2. An employee will be reinstated to the previous position or to a position comparable to the previous position in terms of pay, status, and location provided the employee:
  - a. Presents the LDSS with the certificate or release orders that confirm honorable separation from military service.
  - b. Returns to work within the following time periods (in addition to the time periods set forth below, reasonable time for safe travel and rest must be allowed):
    - (1) Military leave of less than 30 days – after 8 hours of rest the employee must report to work on the first regularly scheduled workday following return home from military service;
    - (2) Military leave of 31 to 180 days – must either send an application to return to work or report to work within 14 days of completing military service;
    - (3) Military leave of 181 days or longer – must either send an application to return to work or report to work within 90 days of completing military service.
    - (4) Service related incapacities – the reporting deadlines for employees who are hospitalized or convalescing because of a service related injury or illness are extended to up to two years.
  - c. Is qualified, or can reasonably be retrained, for the position that the employee:
    - (1) Would have held if employment had not been interrupted due to the military leave;
    - (2) Held at the time military leave commenced; or
    - (3) Would be of like seniority, pay, and status.

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3. In determining the position to which the employee may be entitled, the “escalator principle” is to be used. Under the escalator principle, an employee is to be placed in the position with the highest priority in the re-employment options. The returning employee is to step back in the seniority escalator at the point the employee would have occupied had no military leave been taken. The position would not necessarily be the same job the person previously held.
4. When an employee becomes disabled during military service and cannot perform duties of the previous position and reasonable accommodations are not possible without undue hardship to the LDSS, efforts must be made to place the employee in the nearest comparable position for which the employee qualifies.
5. If employee no longer meets the minimum qualifications of the former position because of changes in job duties, the employee must meet the changed requirements within a reasonable time after reemployment or be offered a position requiring skills comparable to those required in the former position with regard to seniority, status, pay and location.
6. Reinstatement is not required if the LDSS’s circumstances have changed thereby making it impossible or unreasonable to reinstate the employee:
  - (a) If the employee’s formerly held position has been abolished, the employee shall be placed in a position comparable in status and pay to those previously held.
  - (b) If such comparable position is not available, the employee shall be considered affected by a lay-off and lay-off policies shall apply.

### **C. Annual Notice of Military Leave Rights**

Annually the LDSS must provide every employee with a notice of the rights afforded under this policy. The LDSS can meet this obligation by providing an employee a copy of this policy or by referring the employee to the policy and having it available for distribution.

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### **Section V Educational Leave**

#### **Purpose**

The purpose of this policy is to afford employees the opportunity to pursue educational pursuits that further their employment skills.

#### **Scope**

This policy applies to all employees.

#### **A. Use of Educational Leave**

1. An employee interested in pursuing an educational course or program that requires an absence from work must submit a written proposal to the Director setting forth the course or program, the benefits to the LDSS from the employee's attendance in this course, dates for the leave and suggested means to execute the employee's duties during the absence.
2. An employee may be granted educational leave for specific course(s) of study related to the work of the LDSS provided reasonably adequate provisions can be made for the performance of the employee's assigned duties.
3. Educational leave can be with or without pay. If leave with pay is granted its duration shall not be longer than three months.
4. The LDSS may consider a schedule adjustment in lieu of granting leave.

#### **B. Return from Educational Leave**

1. An employee returning from educational leave shall have the advantage of any merit increase that may have been due if the employee had remained continuously in the position.
2. The employee shall have all creditable years of service before the date of separation plus the period of educational leave considered in determining the rate of accrual.
3. An employee returning from educational leave with pay will be placed in his or her former position. With educational leave without pay, there is no obligation to hold the position vacant during the period of leave.

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### **C. Educational Pursuits Required by the LDSS**

If attendance in a course of study, a seminar, or conference is required by the LDSS, the hours in attendance count as hours worked and the employee is to receive his or her regular rate of pay. Educational leave shall not be used for this purpose.

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### Section VI Administrative Leave

#### **Purpose**

The purpose of this policy is to provide procedures for the use of administrative leave.

#### **Scope**

This policy applies to all employees.

#### **A. Use of Administrative Leave**

1. Administrative leave is leave with or without pay granted by the LDSS for an employee to be away from the worksite performing non-work activities. Administrative leave is not an entitlement and its use is purely discretionary on the part of the LDSS.
2. A LDSS may place an employee on administrative leave with pay when
  - a. The LDSS is investigating the employee for misconduct and the LDSS has not determined whether discipline is warranted; or
  - b. Other legitimate LDSS reasons.

#### **B. Benefits While on Administrative Leave with Pay**

An employee on administrative leave with pay receives all the benefits to which an employee on paid status would be entitled to including earned annual and sick leave. Administrative leave with pay, however, does not count as hours worked for the purposes of overtime.

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### Section VII Bereavement Leave

#### Purpose

The purpose of this policy is to set forth the provisions for leave for the death of a family member.

#### Scope

This policy applies to all employees.

#### A. Use of Bereavement Leave

##### 1. Leave for Death of Family Member

- a. An employee may use annual leave for absences that are due to the death of a family member. When annual leave is used, there is no maximum amount of leave that may be used for such purposes provided that the leave time is requested in advance or as soon as practical under the circumstances and the time requested is reasonable under the circumstances.
- b. During a calendar year, an employee may use three (3) days of sick leave for the death of a family member and no more than a total of six (6) days when there are multiple family member deaths during the calendar year. Under the Sick Leave policy, a family member (whether the relationship is by birth, adoption, foster care, marriage) is defined as parents, stepparents, spouse, children, stepchildren, siblings, grandparents, grandchildren and any relative by blood or marriage who resides in the employee's home.
- c. Leave without pay may also be granted for bereavement purposes subject to the rules set forth in that policy.
- d. Bereavement leave is permitted if taken within eight weeks of the death of the family member.

##### 2. Death of Child or Spouse

For the death of an employee's child or spouse, the LDSS may grant the use of up to three weeks of accrued sick leave during the period immediately following the death.

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